

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANCORA TECHNOLOGIES, INC.,

Plaintiff,

v.

TOSHIBA AMERICA INFORMATION
SYSTEMS, INC., DELL INC., HEWLETT-
PACKARD COMPANY,

Defendants,

and

MICROSOFT CORPORATION,

Intervenor and Third Party Plaintiff,

v.

MIKI MULLOR,

Third Party Defendant.

Case No. 2:09-cv-00270-MJP

STIPULATION AND PROTECTIVE
ORDER

Noted: April 29, 2009

Stipulated Protective Order

WHEREAS through the undersigned counsel of record, Plaintiff Ancora Technologies, Inc., Defendants Toshiba America Information Systems, Inc., Dell Inc., Hewlett-Packard Company, Intervenor Microsoft Corporation, and Third Party Defendant Miki Mullor (collectively the "Parties"), respectfully request entry of this stipulated [Proposed] Protective

STIPULATION AND PROTECTIVE ORDER - 1

LAW OFFICES
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Order to expedite the flow of discovery material, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the Parties are entitled to keep confidential, to ensure that only materials the Parties are entitled to keep confidential are subject to such treatment, and to ensure that the Parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c),

IT IS HEREBY ORDERED as follows:

Information Subject To This Order

1. For purposes of this Order, “CONFIDENTIAL INFORMATION” shall mean all information or material that is produced or disclosed by a producing party to a receiving party; which the producing party, including any party to this action and any non-party producing information or material voluntarily or pursuant to a subpoena or a court order, reasonably considers to constitute or to contain trade secrets or other confidential research, development, proprietary, business or commercial information within the meaning of Fed. R. Civ. P. 26(c), whether embodied in physical objects, documents, or the factual knowledge of persons; and which has been so designated by the producing party.

2. For purposes of this Order, “HIGHLY CONFIDENTIAL INFORMATION” shall mean information or material that is produced or disclosed by a producing party to a receiving party; which constitutes proprietary financial or technical information or commercially sensitive competitive information that the producing party maintains as highly confidential within its business. Only the following categories of documents may be designated “HIGHLY CONFIDENTIAL INFORMATION:” (1) strategic business plans that include competitive intelligence, (2) technical documents (including e-mail) that are not shared with third Parties, (3) detailed financial information, and (4) source code (i.e., computer instruction and data definitions expressed in a form suitable for input to an assembler, compiler

1 or other translator). All source code may be further designated under paragraph 22 of this
2 Order.

3 3. Any document or tangible thing containing or including any CONFIDENTIAL
4 INFORMATION may be designated as such by the producing party by marking it
5 "CONFIDENTIAL" prior to or at the time copies are furnished to the receiving party. Any
6 document or tangible thing containing or including any HIGHLY CONFIDENTIAL
7 INFORMATION may be designated as such by the producing party by marking it "HIGHLY
8 CONFIDENTIAL" prior to or at the time copies are furnished to the receiving party.
9 CONFIDENTIAL INFORMATION and/or HIGHLY CONFIDENTIAL INFORMATION
10 may sometimes be referred to herein as "Protected Material."

11 4. Inadvertent or unintentional production of documents or information containing
12 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION that are
13 not designated as such shall not be deemed a waiver in whole or in part of a claim for
14 confidential treatment. If a producing party inadvertently discloses or produces any
15 information that it deems to be CONFIDENTIAL INFORMATION or HIGHLY
16 CONFIDENTIAL INFORMATION without so designating the information, the producing
17 party shall promptly upon discovery of such inadvertent disclosure inform the receiving party
18 in writing. The receiving party shall thereafter treat the CONFIDENTIAL INFORMATION or
19 HIGHLY CONFIDENTIAL INFORMATION as if it had always been so designated under this
20 Protective Order. To the extent that, prior to having been informed by the producing party,
21 such information may already have been disclosed to persons not authorized to see the
22 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, the
23 receiving party shall make every reasonable effort to retrieve the information promptly from
24 such persons and to limit any further disclosure to unauthorized persons. The receiving party
25 shall bear no liability to the producing party, however, for the actions of third Parties to whom

1 such confidential information was disclosed prior to designation of such information as such
2 by the producing party.

3 5. Testimony or information disclosed at a deposition that contains
4 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION may be
5 designated as such by indicating on the record at the deposition the portions of the testimony
6 containing such information. There shall be no wholesale designation of transcripts as
7 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION merely
8 because portions of the transcript contain CONFIDENTIAL INFORMATION or HIGHLY
9 CONFIDENTIAL INFORMATION. Alternatively, the producing party may designate
10 testimony or information disclosed at a deposition, including exhibits, that contain
11 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION by
12 notifying all Parties in writing, within twenty (20) days after the producing party's receipt of
13 the transcript, of the specific pages and lines of the transcript that contain such information.
14 Whether or not designation is made at the time of a deposition, accessibility to each transcript
15 (and the information contained therein) of any deposition in its entirety shall be limited to
16 outside counsel of record only and persons in attendance at the deposition, from the taking of
17 the deposition until twenty (20) days after the actual receipt of the transcript by the producing
18 party, or until receipt of the notice referred to in this paragraph, whichever occurs sooner. At
19 the expiration of the said twenty (20) day period, unless notice hereunder to the contrary is
20 given at the time of the deposition or prior to the expiration of said period, the entire transcript
21 shall be deemed non-confidential.

22 6. Any court reporter or videographer who reports, transcribes or videotapes
23 testimony in this action shall not disclose any CONFIDENTIAL INFORMATION or HIGHLY
24 CONFIDENTIAL INFORMATION, except pursuant to the terms of this Order. To the extent
25 that CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION is

1 used in depositions or at hearings, in the absence of an order entered by the Court to the
 2 contrary, such information shall remain subject to the provisions of this Order, along with the
 3 transcript pages of the deposition testimony and/or trial testimony referring to such information
 4 contained therein. The Parties in conjunction with the Court will discuss whether certain
 5 protection of this Order for CONFIDENTIAL INFORMATION or HIGHLY
 6 CONFIDENTIAL INFORMATION should be embodied in a Protective Order that covers the
 7 trial in this matter.

8 7. In the event that any CONFIDENTIAL INFORMATION or HIGHLY
 9 CONFIDENTIAL INFORMATION is used in any court proceeding in this action, such
 10 information shall not lose its protection hereunder through such use. The confidentiality of
 11 such materials shall be protected as determined and directed by the Court.

12 8. All CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
 13 INFORMATION not reduced to documentary, tangible, or physical form or which cannot be
 14 conveniently designated as set forth in Paragraph 4, shall be designated by the producing party
 15 by informing the receiving party of the designation in writing.

16 9. Any documents (including physical objects) made available for initial
 17 inspection by outside counsel of record for the receiving party prior to producing copies of
 18 selected items shall be considered, as a whole, to constitute HIGHLY CONFIDENTIAL
 19 INFORMATION and shall be subjected to this Order. Thereafter, the producing party shall
 20 have a reasonable time which shall not exceed 10 days to review and designate the appropriate
 21 documents as CONFIDENTIAL INFORMATION, or HIGHLY CONFIDENTIAL
 22 INFORMATION prior to furnishing copies to the receiving party.

23 10. The following information is not CONFIDENTIAL INFORMATION or
 24 HIGHLY CONFIDENTIAL INFORMATION:
 25

1 (a) any information which at the time of disclosure to a receiving party is in
2 the public domain;

3 (b) any information which after disclosure to a receiving party becomes part
4 of the public domain as a result of publication not involving a violation of this Order or
5 any violation of law;

6 (c) any information which a receiving party can show was received by it,
7 whether before or after the disclosure, from a source who obtained the information
8 lawfully and under no obligation of confidentiality to the producing party;

9 (d) any information which a receiving party can show was independently
10 developed by it after the time of disclosure by personnel who have not had access to the
11 producing party's CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
12 INFORMATION; and

13 (e) any information that the Court concludes does not qualify for protection
14 under Fed. R. Civ. P. 26(c).

15 **No Waiver Of Privilege**

16 11. Inspection or production of documents (including physical objects) shall not
17 constitute a waiver of the attorney-client privilege or work-product immunity or any other
18 applicable privilege or immunity from discovery if, as soon as reasonably possible after the
19 producing party becomes aware of any inadvertent or unintentional disclosure, the producing
20 party designates any such documents as within the attorney-client privilege or work-product
21 immunity or any other applicable privilege or immunity and requests return of such documents
22 to the producing party. Upon request by the producing party, the producing party shall add the
23 inadvertently produced document(s) to a log in accordance with Fed.R.Civ.P. 26(b)(5), the
24 receiving party shall immediately return all copies (except as explained below) of such
25 inadvertently produced document(s) and shall immediately destroy the content of any such

1 inadvertently produced document(s) in any receiving party work product. The receiving party
 2 shall not use such information for any purpose until further Order of the Court. Nothing herein
 3 shall prevent the receiving party from challenging the propriety of the attorney-client privilege
 4 or work product immunity or other applicable privilege or immunity designation by submitting
 5 a written challenge to the Court. To do so, the receiving party may retain a copy of the
 6 inadvertently produced document(s) for submission to the Court. The challenge shall not
 7 assert as a ground for production the fact or circumstances of the inadvertent production or any
 8 information about the contents of the materials that was gained due to the inadvertent
 9 production. The protections against waiver of applicable privileges set out in this paragraph
 10 are in addition to the protections provided under Fed. R. Evid. 502(b).

11 **Discovery Rules Remain Unchanged**

12 12. Nothing herein shall alter or change in any way the discovery provisions of the
 13 Federal Rules of Civil Procedure. Identification of any individual pursuant to this Protective
 14 Order does not make that individual available for deposition or any other form of discovery
 15 outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local
 16 Rules, or any other applicable order of this Court.

17 **Persons Authorized To Receive Confidential Information, Highly Confidential**
 18 **Information And Outside Counsel Eyes Only Source Code**

19 13. CONFIDENTIAL INFORMATION shall be disclosed only to the following
 20 persons:

21 (a) the Parties' outside counsel of record in this action and employees of
 22 such counsel assigned to and necessary to assist such counsel in the preparation and
 23 trial of this action, including but not limited to paralegals, law clerks, and stenographic
 24 and clerical employees, and excluding consultants, experts and investigators;

25 (b) subject to the requirements of paragraphs 15-17 herein, consultants and
 experts who have been retained by the receiving party or its outside counsel of record

1 to provide assistance in this matter (with disclosure only to the extent necessary to
2 perform such work) and who are not current employees of the receiving party;

3 (c) subject to the requirements of paragraphs 18 and 19 herein, two (2) in-
4 house attorneys employed by Dell, Inc. and two (2) in-house attorneys employed by
5 Toshiba America Information Systems, Inc., and two (2) in-house attorneys employed
6 by Hewlett-Packard Company, and two (2) in-house attorneys employed by Microsoft,
7 and two (2) paralegals or legal assistants employed by and assisting each of the
8 identified in-house counsel;

9 (d) subject to the requirements of paragraph 19, up to two (2) current
10 employees or officers of the receiving party with responsibility for managing or
11 evaluating this case, following identification of each employee or officer to each of the
12 other Parties;

13 (e) graphics, translation, design, jury and/or trial consulting services,
14 including mock jurors, retained by a party;

15 (f) data processing vendors, photocopy, document imaging and database
16 services, and consultants retained by outside counsel of record to set up, maintain
17 and/or operate computer systems, litigation databases or to convert data for inclusion in
18 such databases; and

19 (g) the Court, its technical advisor (if one is appointed), persons employed
20 by the Court, jurors, mediators, and court reporters or videographers recording the
21 testimony or argument at a hearing, trial or deposition in this action or any appeal
22 therefrom.

23 14. HIGHLY CONFIDENTIAL INFORMATION shall be disclosed only to the
24 following persons:
25

1 (a) the Parties' outside counsel of record in this action and employees of
2 such counsel assigned to and necessary to assist such counsel in the preparation and
3 trial of this action, including but not limited to paralegals, law clerks, and stenographic
4 and clerical employees, and excluding consultants, experts and investigators;

5 (b) subject to the requirements of paragraphs 15-17 herein, consultants and
6 experts who have been retained by the receiving party or its outside counsel of record
7 to provide assistance in this matter (with disclosure only to the extent necessary to
8 perform such work) and who are not current employees of the receiving party;

9 (c) graphics, translation, design, jury and/or trial consulting services,
10 including mock jurors, retained by a party;

11 (d) data processing vendors, photocopy, document imaging and database
12 services, and consultants retained by outside counsel of record to set up, maintain
13 and/or operate computer systems, litigation databases or to convert data for inclusion in
14 such databases; and

15 (e) the Court, its technical advisor (if one is appointed), persons employed
16 by the Court, jurors, mediators, and court reporters or videographers recording the
17 testimony or argument at a hearing, trial or deposition in this action or any appeal
18 therefrom.

19 (f) subject to the requirements of paragraphs 18 and 19 herein, two (2) in-
20 house attorneys employed by Dell Inc., one (1) in-house attorney employed by Toshiba
21 America Information Systems, Inc., one (1) in-house attorney employed by Hewlett-
22 Packard Company, two (2) in-house attorneys employed by Microsoft, two (2)
23 paralegals employed by and assisting each of the identified in-house counsel, and
24 administrative staff of the above-referenced persons.
25

(g) Miki Mullor of Ancora Technologies, Inc. is allowed access to “HIGHLY CONFIDENTIAL INFORMATION” only as follows: To the extent that Microsoft has information suggesting that Miki Mullor has previously viewed documents designated as “HIGHLY CONFIDENTIAL INFORMATION,” Microsoft will so advise Ancora and Miki Mullor will be allowed to view, but not possess, such documents.

15. Prior to disclosure of any Protected Material to any consultant or expert, the receiving party shall first give written notice to the producing party, who shall have five (5) business days after such notice is given (plus three (3) business days if notice is given other than by hand delivery, e-mail transmission, or facsimile transmission) to object in writing. The party desiring to disclose Protected Material to a consultant or expert shall provide the curriculum vitae of such individual and shall include the following information about such individual in the written notice:

- (a) business address;
- (b) business title;
- (c) business or profession;
- (d) any previous or current relationship (personal or professional) with any of the Parties; and
- (e) a listing of other cases in which the individual has testified (at trial or deposition), and all companies with which the individual has consulted or by which the individual has been employed, within the last four years.

16. No Protected Material shall be disclosed to such consultant or expert until after the expiration of the foregoing notice period.

17. If during the notice period the producing party serves an objection upon the receiving party desiring to disclose Protected Material to the consultant or expert, there shall be

no disclosure of Protected Material to such individual pending resolution of the objection. The producing party objecting to disclosure of Protected Material to the individual shall provide an explanation of the basis of its objection, and consent to the disclosure of Protected Material to the individual shall not be unreasonably withheld. If a producing party objects to the disclosure of Protected Material to a consultant or expert, the receiving party and producing party shall meet and confer pursuant to Local Rule CR 37(a)(2)(A) regarding the objection within three (3) business days after such objection is served. If the Parties cannot come to an agreement, the producing party shall have seven (7) business days to serve the receiving party with the producing party's portion of a joint submission under Local Rule CR 37(a)(2)(B). The Parties shall thereafter follow the procedures set forth in Local Rule CR 37(a)(2)(B) to file the joint submission for resolution by the Court whether the consultant or expert shall be precluded from having access to the producing party's Protected Material, or for other appropriate relief. If the producing party fails to serve a written objection or to serve its portion of the joint stipulation within the prescribed periods above, then any objection to the disclosure of Protected Material to the consultant or expert is waived, and any Protected Material may be thereafter disclosed to such individual. No document designated by a producing party as Protected Material shall be disclosed by a receiving party to a consultant or expert until after the individual has signed the Confidentiality Agreement appended hereto as Attachment A, stating that he or she has read and understands this Order and agrees to be bound by its terms. Such written agreement shall be retained by the outside counsel of record for the party that has retained the consultant or expert, but need not be disclosed to any other party.

18. The following additional restrictions apply to Protected Material that is produced by any of Toshiba America Information Systems, Inc. ("TAIS"), Hewlett-Packard Company ("HP") or Dell, Inc. ("Dell") (the "PC Company Defendants). Protected Material

1 produced by any PC Company Defendant shall not be disclosed to any employee, in-house
2 counsel, in-house paralegal or other representative or agent of any of the other PC Company
3 Defendants. The limitations of this paragraph do not apply to, outside counsel of record
4 (including staff), outside consultants or outside experts of a PC Company, retained for this
5 action.

6 19. Prior to disclosure of any Protected Material to any current employee or officer
7 of the receiving party, outside counsel of record for the receiving party shall first obtain from
8 such individual a signed Confidentiality Agreement, in the form appended hereto as
9 Attachment A, stating that he or she has read and understands this Order and agrees to be
10 bound by its terms. Such written agreement shall be retained by outside counsel of record for
11 the receiving party, and a copy of which shall be produced to the producing party within seven
12 (7) calendar days after execution.

13 20. Prior to disclosure of any Protected Material to any graphics, translation, design,
14 jury and/or trial consulting services, including mock jurors, data processing vendors,
15 photocopy, document imaging and database services, and consultants retained by outside
16 counsel of record to set up, maintain and/or operate computer systems, litigation databases or
17 to convert data for inclusion in such databases, mediators, and court reporters or videographers
18 not employed by the Court, any such individual or an authorized representative of any such
19 entity must execute a written Confidentiality Agreement in the form appended hereto as
20 Attachment A. Such agreement shall be retained by the outside counsel of record obtaining it,
21 but need not be disclosed to any other party.

22 21. In the event of a disclosure of any Protected Material to a person or persons not
23 authorized to receive such information under this Protective Order, the party responsible for
24 having made such disclosure, and each party with knowledge thereof, shall immediately notify
25 the producing party and provide all known relevant information concerning the nature and

1 circumstances of the disclosure. The party responsible for having made such disclosure shall
 2 also promptly take all reasonable measures to retrieve the improperly disclosed information
 3 and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

4 **Restrictions On Source Code**

5 22. For purposes of this Order, "OUTSIDE COUNSEL EYES ONLY SOURCE
 6 CODE" shall mean all information or material that is produced or disclosed by a producing
 7 party to a receiving party; which constitutes source code (i.e., computer instructions and data
 8 definitions expressed in a form suitable for input to an assembler, compiler or other translator)
 9 and any descriptions thereof; and which has been so designated by the producing party.
 10 Access to OUTSIDE COUNSEL EYES ONLY SOURCE CODE shall be limited to the
 11 manner provided below:

12 (a) All electronic copies of OUTSIDE COUNSEL EYES ONLY SOURCE
 13 CODE shall be maintained in the custody and control of the producing party's outside
 14 counsel of record.

15 (b) All hard (non-electronic) copies of OUTSIDE COUNSEL EYES ONLY
 16 SOURCE CODE and all notes, analyses or descriptions of OUTSIDE COUNSEL
 17 EYES ONLY SOURCE CODE shall be stored and viewed only at: (i) the producing
 18 party's outside counsel of record; (ii) the receiving party's outside counsel of record;
 19 (iii) the site where any deposition relating to the OUTSIDE COUNSEL EYES ONLY
 20 SOURCE CODE is taken; (iv) the Court; or (v) any secure intermediate location
 21 reasonably necessary to transport the information to a hearing, trial, or deposition in
 22 this action.

23 (c) OUTSIDE COUNSEL EYES ONLY SOURCE CODE in electronic
 24 format shall be provided for inspection only in computer-searchable format loaded on a
 25 standalone computer (i.e., a computer that is not connected to a network, the Internet or

1 a peripheral device other than a non-networked printer) at a secure, locked facility
2 designated by the producing party within the greater Detroit metropolitan area, to be
3 made available on three (3) business days notice. No electronic copies of OUTSIDE
4 COUNSEL EYES ONLY SOURCE CODE may be made, except by the producing
5 party. Inspection by a receiving party may be subject to additional reasonable security
6 measures by the producing party (e.g., the producing party may require presentation of
7 photo identification by representatives of the producing party prior to inspection). The
8 inspection will proceed without any representative of the producing party or its outside
9 counsel present in the same room, unless agreed otherwise. Communications among
10 inspection personnel shall not be recorded or otherwise purposely overheard by any
11 representative of the producing party or its outside counsel.

12 (d) The receiving party inspecting OUTSIDE COUNSEL EYES ONLY
13 SOURCE CODE may have printouts of specified portions of such code on 8-1/2 by 11
14 inch watermarked paper. The producing party shall Bates-stamp the printouts, label
15 each printout "OUTSIDE COUNSEL EYES ONLY SOURCE CODE," retain a copy of
16 the printouts, and provide one copy of the printouts to the receiving party. Outside
17 counsel of record for the requesting party shall ensure that the printouts and any notes,
18 analyses or descriptions of OUTSIDE COUNSEL EYES ONLY SOURCE CODE are
19 stored in locked rooms when not in use and in accordance with the provisions of
20 paragraph 22(b).

21 (e) Only those persons identified in paragraph 14 (a) through (e) may have
22 access to the OUTSIDE COUNSEL EYES ONLY SOURCE CODE. Under no
23 condition may any person disclose, in whole or in part, copies of, or the substance of,
24 the OUTSIDE COUNSEL EYES ONLY SOURCE CODE of the producing party to
25

1 any unauthorized person, including any officers, directors, in-house counsel,
2 employees, or non-litigation consultants of the receiving party.

3 (f) Outside counsel of record for the receiving party with custody of
4 OUTSIDE COUNSEL EYES ONLY SOURCE CODE shall maintain a source code log
5 containing the following information: (1) the identity of each person granted access to
6 the OUTSIDE COUNSEL EYES ONLY SOURCE CODE; and (2) each date when
7 such access was granted. Outside counsel of record for the requesting party will
8 produce each source code log to the producing party within sixty (60) days of the final
9 determination of this action.

10 (g) OUTSIDE COUNSEL EYES ONLY SOURCE CODE and documents
11 describing OUTSIDE COUNSEL EYES ONLY SOURCE CODE may be filed with
12 the Court or offered into evidence. The party filing or offering OUTSIDE COUNSEL
13 EYES ONLY SOURCE CODE shall limit the portions of the OUTSIDE COUNSEL
14 EYES ONLY SOURCE CODE that are filed or offered to those lines of code that are
15 relevant to and necessary for deciding the issue for which the OUTSIDE COUNSEL
16 EYES ONLY SOURCE CODE is being filed or offered. No OUTSIDE COUNSEL
17 EYES ONLY SOURCE CODE or documents describing the code set forth in the
18 OUTSIDE COUNSEL EYES ONLY SOURCE CODE shall be filed with the Court
19 except under seal and referencing this Order.

20 **Prosecution Bar**

21 23. Any person who actually reviews CONFIDENTIAL INFORMATION,
22 HIGHLY CONFIDENTIAL INFORMATION or OUTSIDE COUNSEL EYES ONLY
23 SOURCE CODE shall not directly or indirectly (e.g., by advising) participate in the drafting or
24 amending of any patent claims relating to the subject of the U.S. Patent No 6,411,941 or the
25 subject of operating system software security for personal computers from the time of receipt

1 or review of such information through and including one (1) year following judgment
 2 (excluding any appeals) or settlement of this matter, whichever is earlier. This restriction does
 3 not apply generally to law firms involved in this litigation, but only to specific individuals. In
 4 the event of a re-examination of the U.S. Patent No. 6,411,941 by the U.S. Patent and
 5 Trademark office, the limitations set out in this paragraph above shall not prevent outside
 6 counsel for a party from participating in the re-examination proceedings—provided, however,
 7 that any individual counsel who actually has reviewed CONFIDENTIAL INFORMATION,
 8 HIGHLY CONFIDENTIAL INFORMATION, or OUTSIDE COUNSEL EYES ONLY
 9 SOURCE CODE shall not participate in the drafting, formulation, submission, prosecution, or
 10 appeal of new claims or any claim amendments related to U.S. Patent No. 6,411,941, whether
 11 as part of the above described re-examination proceedings or otherwise. The Parties
 12 specifically agreed to address whether independent experts are subject to the prosecution bar of
 13 paragraph 23 on an as needed basis. The Parties also specifically agreed to address whether
 14 outside counsel can participate fully in a re-examination that is initiated by or on behalf of one
 15 of the Parties in this lawsuit. The Parties each respectfully reserve and do not waive any
 16 position or issues based on this stipulation regarding the above points.

17 **Challenges To Confidentiality Designations**

18 24. The Parties will use reasonable care when designating documents or
 19 information as CONFIDENTIAL or HIGHLY CONFIDENTIAL. The Parties shall exercise
 20 such care on a document-by-document basis and shall not designate documents or other items
 21 CONFIDENTIAL or HIGHLY CONFIDENTIAL en masse. Nothing in this Order shall
 22 prevent a receiving party from contending that any or all documents or information designated
 23 as CONFIDENTIAL or HIGHLY CONFIDENTIAL have been improperly designated.
 24 A receiving party may at any time request that the producing party cancel or modify the
 25 confidentiality designation with respect to any document or information contained therein.

25. A party shall not be obligated to challenge the propriety of a CONFIDENTIAL or HIGHLY CONFIDENTIAL designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. Such a challenge shall be written, shall be served on outside counsel of record for the producing party, and shall particularly identify the documents or information that the receiving party contends should be differently designated. The Parties shall use their best efforts to resolve such disputes promptly and informally. If agreement cannot be reached, the receiving party shall request that the Court cancel or modify a CONFIDENTIAL or HIGHLY CONFIDENTIAL designation.

Limitations On The Use Of Confidential Information And Highly Confidential Information

26. CONFIDENTIAL INFORMATION and HIGHLY CONFIDENTIAL INFORMATION shall be held in confidence by each person to whom it is disclosed, shall be used only for purposes of this litigation, shall not be used for any business purpose, and shall not be disclosed to any person who is not entitled to receive such information as herein provided. All CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall be carefully maintained so as to preclude access by persons who are not entitled to receive such information.

27. Except as may be otherwise ordered by the Court, any person may be examined as a witness at depositions and trial and may testify concerning all CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION of which such person has prior knowledge. Except as may be otherwise ordered by the Court, any person may be examined as a witness at depositions and trial and may testify concerning any document containing CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION of a producing party that establishes on its face or is established from other documents or testimony to have been previously received from or communicated to the person.

1 Any such persons shall not be allowed to retain any CONFIDENTIAL INFORMATION or
 2 HIGHLY CONFIDENTIAL INFORMATION disclosed under this paragraph.

3 28. Pursuant to Local Rule CR 5(g), a party shall request to seal or otherwise
 4 restrict public access to any transcripts, exhibits, discovery responses, pleadings, briefs, and
 5 other material submitted to the Court that contain or disclose Protected Material by formal
 6 motion in accordance with Local Rule CR 5(g)(3)-(5), unless the Parties otherwise agree in
 7 writing that the material may not be publicly disclosed or the Court otherwise orders. Pursuant
 8 to the Court's mandatory electronic filing requirement, such items of information shall be filed
 9 under seal pursuant to the mechanism that has been established for such filings via the Court's
 10 ECF filing system. If a physical item containing or disclosing Protected Material cannot be so
 11 filed, it shall be submitted to the court in a sealed envelope or other appropriate sealed
 12 container. Each sealed envelope or container shall be endorsed with the title of this matter, an
 13 indication of the nature of the contents of such sealed envelope or other container, and a
 14 statement substantially in the following form:

15 This envelope contains information designated as Protected Material
 16 under the governing Court Protective Order and is not to be opened, and
 17 the contents are not to be displayed or revealed, except by order of the
 Court presiding over this matter.

18 In addition, both the sealed envelope or container and the first page of any Protected Material
 19 filed under seal shall include the conspicuous legend: "CONFIDENTIAL—FILED UNDER
 20 SEAL PURSUANT TO PROTECTIVE ORDER."

21 29. If any person fails to file Protected Material under seal in accordance with the
 22 terms of Paragraph 28, the producing party or any other party claiming confidentiality for the
 23 Protected Material may request that the Court place the filing under seal.
 24
 25

1 30. Nothing in this Protective Order shall preclude any party to this lawsuit or its
2 attorneys from disclosing or using, in any manner or for any purpose, its own
3 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION.

4 **Non-Party Use Of This Protective Order**

5 31. A non-party producing information or material voluntarily or pursuant to a
6 subpoena or a court order may designate such material or information in the same manner and
7 shall receive the same level of protection under this Protective Order as any party to this
8 lawsuit. However, non-Parties to this lawsuit who designate material or information under this
9 Protective Order shall not thereby obtain the right to have access to any CONFIDENTIAL
10 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION produced by any party to
11 this lawsuit.

12 **Miscellaneous Provisions**

13 32. Any of the notice requirements herein may be waived, in whole or in part, but
14 only by a writing signed by the attorney of record for the party against whom such waiver will
15 be effective.

16 33. Within sixty (60) days after the entry of a final non-appealable judgment or
17 order, or the complete settlement of all claims asserted against all Parties in this action, each
18 receiving party shall, at its option, either return to the producing party or destroy all physical
19 objects and documents that are designated CONFIDENTIAL or HIGHLY CONFIDENTIAL
20 by a producing party, and shall destroy in whatever form stored or reproduced, all other
21 physical objects and documents, including but not limited to, correspondence, memoranda,
22 notes, and other work product materials, which contain or refer to CONFIDENTIAL
23 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION; provided, that all
24 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, not
25 embodied in physical objects and documents, shall remain subject to this Order.

1 Notwithstanding the foregoing, outside counsel of record shall be entitled to maintain one copy
 2 of all pleadings, motions, and trial briefs (including all supporting and opposing papers and
 3 exhibits thereto), written discovery requests and responses (and exhibits thereto), deposition
 4 transcripts (and exhibits thereto), trial transcripts, and exhibits offered or introduced into
 5 evidence at trial. At the request of the producing party, a representative of the receiving party
 6 shall certify under oath that such documents have been destroyed within sixty (60) days of the
 7 final determination of this action.

8 34. After termination of this litigation, the provisions of this Order shall continue to
 9 be binding, except with respect to those documents and information that become a matter of
 10 public record. This Court retains and shall have continuing jurisdiction over the Parties and
 11 recipients of CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
 12 INFORMATION for enforcement of the provisions of this Order following termination of this
 13 litigation.

14 35. This Order shall be binding upon the Parties and their attorneys, successors,
 15 legal representatives, assigns, subsidiaries, divisions, employees, agents, independent
 16 contractors, or other persons or organizations over which they have control.

17 36. This Order is entered without prejudice to the right of any party to apply to the
 18 Court at any time for additional protection, or to relax or rescind the restrictions of this Order,
 19 when convenience or necessity requires. This Order is only for the benefit of the Parties to this
 20 litigation. The Court shall take appropriate measures to protect CONFIDENTIAL
 21 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION at trial and any hearing in
 22 this case.

23 37. Until such time as this Protective Order has been entered by the Court, the
 24 Parties agree that upon execution by the Parties, the Protective Order will be treated as though
 25 it had been "So Ordered."

1 38. The United States District Court for the Western District of Washington, is
2 responsible for the interpretation and enforcement of this Protective Order. All disputes
3 concerning CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
4 INFORMATION produced under the protection of this Protective Order shall be resolved by
5 the United States District Court for the Western District of Washington.

6 **SO STIPULATED AND AGREED:**

7 DATED: April 29, 2009

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

8
9 By /s/ Arthur W. Harrigan, Jr.

10 Arthur W. Harrigan, Jr., WSBA #1751

11 Christopher T. Wion, WSBA #33207

12 PERKINS COIE BROWN & BAIN P.A.

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21 *Attorney for Intervenor Microsoft Corporation*
22
23
24
25

1
2 DATED: April 29, 2009

BROOKS KUSHMAN P.C.

3
4 By /s/ Marc Lorelli

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11
12
13 *Attorneys for Plaintiff Ancora Technologies, Inc. and Third*
14 *Party Defendant Miki Mullor*

ORDER

IT IS SO ORDERED.

Dated this 5th day of May, 2009.



Marsha J. Pechman
United States District Judge

Presented by:

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By /s/ Arthur W. Harrigan, Jr.
Arthur W. Harrigan, Jr., WSBA #1751
Christopher T. Wion, WSBA #33207

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Attorney for Intervenor Microsoft Corporation

EXHIBIT A

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANCORA TECHNOLOGIES, INC.,

Plaintiff,

v.

TOSHIBA AMERICA INFORMATION
SYSTEMS, INC., DELL INC., HEWLETT-
PACKARD COMPANY,

Defendants,

and

MICROSOFT CORPORATION,

Intervenor and Third Party Plaintiff,

v.

MIKI MULLOR,

Third Party Defendant.

Case No. 2:09-cv-00270-MJP

**EXHIBIT A TO PROTECTIVE
ORDER – CONFIDENTIALITY
AGREEMENT**

1
2 I, _____, state:

3 1. I reside at _____.

4 2. My present employer is _____, and my present occupation or
5 job title is _____.

6 3. I have read and understood the Protective Order dated _____, 2009,
7 entered in this case, and I agree to be bound by its terms.

8 4. I agree to abide strictly by the limitations of the Protective Order in the
9 maintenance, disclosure and use of any information that I receive that has been designated
10 under the Protective Order.

11 5. I agree to be subject to the authority of the United States District Court for the
12 Western District of Washington in the event of any violation of this agreement or dispute
13 related to this agreement.

14 6. I state under penalty of perjury under the laws of the United States of America
15 that the foregoing is true and correct.

16
17 Executed on: _____

18 Signature: _____
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I, Linda Bledsoe, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.

2. On April 29, 2009, I caused the preceding document to be served on counsel of record by ECF delivery through the CM/ECF System, by email, and by U.S. Mail, postage prepaid.

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Inc. and Third Party Defendant Miki Mullor*

/s/ Linda Bledsoe

LINDA BLEDSOE